IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 144 of 2004

SANTA SINGH & ANR
V/S
JAGGAR SINGH & ORS

Mr. VIJAY AGARWAL, for the appellant / petitioner

Mr. RS GILL, for the respondent

Date of Order : 10.8.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

It is contended by learned counsel that the learned trial Court had found that the agreement, Ex.1 has been interpolated, inasmuch as, in the date 1.8.94, the figure '9' is an interpolated figure by erasing earlier existing figure by blade. While the learned lower Appellate Court has held that from perusal of the agreement Ex.1, it does not appear that there has been any interpolation, inasmuch as, the ink of the figure '9' is equally dark as of the other digits of this date, and it is not established that the plaintiff has interpolated this date for the purpose of bringing the suit within limitation which had otherwise become barred by limitation.

It is contended by learned counsel, that in view

of the fact that the document is interpolated, and that finding having not been set aside by the learned lower Appellate Court, this decree is bad.

I have considered the submissions, and have gone through the entire material on record, as the record has been requisitioned vide order dated 26.9.04. At the same time, I have also gone through the pleadings of the parties.

In my view, from a proper reading of the pleadings, and the evidence of the parties, it is clear that the defendant had come with a case of having not executed the sale deed, rather the tenor of the written-statement, as originally filed on 31.10.95 is, that the land was earlier mortgaged with the plaintiff, and from the tenor of the agreement, it is clear that the transaction appears to be of the mortgage, and since the permissible period of mortgage is 5 years, on expiry of which period, the mortgage automatically stands redeemed, in order to circumvent those provisions, the period of 10 years was mentioned. This pleading has purportedly been taken as an interpretation of the document Ex.1, while in para-4 of the written-statement, the execution of the agreement, entering into any agreement for sale, or delivery of possession of the land to the plaintiff, had been denied. As against this, while in the witness-box, D.W.1 Kripal Singh has clearly admitted, that the land was earlier mortgaged with

the plaintiff, some 20 years back, and then since he could not manage for payment of the mortgage money, so as to redeem the property, after some 4-5 years, a fresh mortgage was effected, and it was stipulated, that as and when the funds are available with him, the land would be redeemed. He has also admitted, that the possession of the land is with the plaintiff, and that he did not take any steps for the last 20 years to recover back the possession. Then he has also admitted that on both the occasions, the defendants had purchased the stamps.

In my view, this evidence does clearly indicate that the defendant indirectly admits the transaction, and treats it to be a mortgage, instead of an agreement to sell.

Coming to the question of interpolation, it may be noticed that the statements of the plaintiff Jagar Singh were recorded on 1.3.1997, and he has proved the agreement Ex.1 scribed by Lal Chand, Petition Writer, as per directions of the defendant appellant, and to this witness nothing was suggested in this regard. Then, Lal Chand was examined as P.W.2 who also proved the document Ex.1, and various signatures, and thumb mark thereon, and to him it was put in cross-examination, and he has replied that figure '9' is not differently written, and whatever was not properly legible he has written by hand. Significantly it

was put to him, that as a matter of fact instead of mortgage the document was executed as agreement to sale, and therefore period of 10 years was stipulated, so that mortgage may not come to an end with expiry of 5 years. Thus, till this stage, and despite seeing the agreement in original in the Court, the defendants' consistent case was about the document being only a mortgage, and having been given the colour of agreement to sale, and in order to avoid the mortgage coming to an end with expiry of five years, stipulation of ten years was incorporated. This suggestion is consistent with the contents of Ex.1 stipulating the date of performance to be 1.8.1994. It is in this sequence, that thereafter, on 6.9.1997, an application was filed seeking to amend the written statement by incorporating para-18 in the paras of additional pleas, seeking to plead, that in the date stipulated being 8.8.1994, the figure '8' has been erased, and made '9' by typewriter, so that the suit may be within limitation, while actually the figure was "8.8.1994". This amendment application was allowed vide order dt. 20.1.1998, and amended written statement was filed on 4.2.1998. It is significant to note that, in the agreement Ex.1 "8.8.1994" is not the date stipulated, as contended in the application. However, contrary to the averments of the application, in para-18 as incorporated in the written statement, the pleading taken was that in the date "1.8.94" the figure '9' has been interpolated to bring the suit

within limitation by interpolating it from 1.8.84 to 1.8.94. Thereafter on 13.7.1998 additional issue no. 7A was framed, being as to whether in portion E to F in Ex.1, by erasing figure '8', figure '9' has been typed by wrongly bringing the suit within limitation. It is thereafter, that since the plaintiff's evidence was continuing, that the plaintiff examined P.W.4 Mahendra Sharma, being the person who has typed Ex.1, who has proved the date "1.8.94" being E to F on Ex.1 to have been originally typed by him, and even in cross-examination he has deposed, that all the digits of the date are identical, and nothing has been erased by rubbing below the figure '9', and that both the parties were present at the site, and he had typed the document as per the dictation being given by his father Lal Chand, (P.W.2.). Thus, the plaintiff by leading positive evidence had proved the issue in his favour, by proving, that there is no interpolation, and figure '9' is as was originally typed. Significantly after the statement of this P.W.4 was recorded, the defendant examined himself on 22.4.2000 as D.W.1 Kripal Singh. What is significant to note is, that apart from the proposition as noticed above, nothing has been deposed by this witness about the interpolation much less having been done by the plaintiff in the manner alleged in para-18 of the written statement. Thus, despite the burden of issue no. 7-A being specifically on the defendant, no evidence whatever was led by the defendant on this issue, and the evidence was

voluntarily closed by the defendant on 22.4.2000 itself. Not only this, on two occasions being 4.8.97 and 6.9.97, the defendant moved application for getting the document examined by hand writing expert (for forensic examination of the document), but then, both the applications were got dismissed as not pressed. Not only this, on 12.1.98 the plaintiff also filed an application seeking permission to examine the typist, who had typed the document, but then this application does not appear to have ever been pressed, and as observed above, after examining Kripal Singh D.W.1 on 22.4.2000, the defendant voluntarily closed his evidence, obviously therefore, it is clear that he did not intend to examine the scribe either.

Thus in my view, despite the issue no. 7A having been positively framed, burden having been placed on the defendant, the defendant has clearly failed to lead any evidence on this issue, and therefore, there was no occasion for the learned trial court to record any finding about any alleged interpolation. That apart even after seeing the document I am at one with the findings recorded by the learned lower Appellate Court regarding the document Ex. 1.

The appeal thus, does not involve any substantial question of law. The same is, therefore, dismissed summarily.

(N P GUPTA),J.